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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,873	08/21/2003	Aaron Golle	1748.001US1	8656
21186	7590	11/25/2005	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH 1600 TCF TOWER 121 SOUTH EIGHT STREET MINNEAPOLIS, MN 55402			HAN, JASON	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/645,873	Applicant(s) GOLLE ET AL.	
	Examiner Jason M. Han	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20050919</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see Pages 5-7, filed September 19, 2005, with respect to the rejection(s) of Claim(s) 1-23 under 35 USC §102(b) and 35 USC §103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Rosa (U.S. Patent 5518561).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant recites "attaching the safety sign to one or more vehicles" and "driving the vehicles in a formation on the road", which renders indefiniteness and uncertainty. Applicant is advised to provide a distinction between whether one vehicle or a multiplicity of vehicles is claimed in driving in a certain formation. In addition, the Applicant only claims forming a single safety sign and not a plurality as later mentioned. At present, the Examiner has assumed the best-deemed interpretation in the rejections below.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Rosa (U.S. Patent 5518561).

Rosa discloses a method including:

- A safety sign [Figures 1-2: (10)]; Column 2, Lines 59-63; Claims 1-7] including an EL lighting surface formed into a chosen pattern [Figure 3; Column 5, Lines 38-42];
  - One or more vehicles [Figure 1: (14)] on which the safety sign is attached; and
  - Driving the vehicle(s) in a formation on the road [inherent] wherein the safety sign(s) are visible to provide guidance for the vehicle(s) [Abstract; Column 5, Lines 32-38].
4. Claims 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosa (U.S. Patent 5518561).
5. With regards to Claim 2, Rosa discloses a method including:
- Forming a safety sign [Column 2, Lines 59-63; Claims 1-7], including:
    - = Selecting a pattern to convey a visual safety message [Figure 2: (18); Claim 1(a); 1(b)];
    - = Attaching the pattern to an EL lighting surface [Figure 2: (16); Claim 1(c); 1(d)];
  - Attaching the safety sign to one or more vehicles [Figure 1: (14)]; and

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- Driving the vehicle(s) in a formation on a road [Figure 1: (14) – inherent] wherein the safety sign(s) is visible to provide guidance for the vehicles [Abstract; Column 5, Line 33-38].
6. With regards to Claim 4, Rosa discloses selecting a pattern to convey a visual safety message [Claim 1] including selecting a text message [Figures 1-2: (10)].
7. Claims 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosa (U.S. Patent 5518561).
8. With regards to Claim 8, Rosa discloses a method including:
- Forming one or more safety signs [Column 2, Lines 59-63; Claims 1-7], wherein each safety message includes:
    - = Selecting a pattern to convey a visual safety message [Claim 1(a); 1(b)];
    - = Attaching the pattern to an EL lighting surface [Claim 1(c); 1(d)];
  - Attaching the safety sign to a transportation vehicle carrying an oversized load [Figure 1: (14)]; and
  - Driving the vehicle on a road [Figure 1: (14) – inherent] wherein the safety sign is visible to provide warning of the oversized load [Column 5, Line 33-38].
9. With regards to Claim 10, Rosa discloses the safety sign being attached to the rear of the transportation vehicle [Column 5, Lines 25-28].
10. Claims 12-13 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosa (U.S. Patent 5518561).

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11. With regards to Claim 12, Rosa discloses a safety sign including:
  - A pattern [Figure 2: (18)] selected to convey a visual safety message [Column 2, Lines 59-63; Column 5, Lines 33-38], whereby the pattern is positionable on a rigid or flexible surface [Column 4, Lines 20-24];
  - An EL lighting surface [Figure 2: (16)] that contrasts the pattern, allowing the pattern to be seen from a distance; and
  - A power source coupled to the EL lighting surface [Column 5, Lines 29-38].
12. With regards to Claim 13, Rosa discloses the pattern including a text message [Figures 1-2: (10)].
13. With regards to Claim 15, Rosa discloses the pattern [Figure 2: (18)] being layered over the EL lighting surface [Figure 2: (16)] to mask a portion of the EL lighting surface to provide contrast.
14. With regards to Claim 16, Rosa discloses the pattern being formed from EL lighting material that has been cut to form the pattern [Column 5, Lines 38-42].
15. With regards to Claim 17 Rosa discloses the power source including a battery [Column 5, Lines 31-34].

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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16. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosa (U.S. Patent 5518561) as applied to Claim 2 above, and further in view of Fuller (U.S. Patent 2983914).

Rosa discloses the claimed invention as cited above, but does not specifically teach the vehicle being a snowplow.

Fuller teaches using a warning light onto a snowplow [Column 1, Lines 21-24].

It would have been obvious to one ordinarily skilled in the art at the time of invention to incorporate the safety sign of Rosa onto a snowplow, as principally taught by Fuller, in order to ensure safety and warn proximate drivers of the snowplow. Such a configuration is an obvious engineering decision whereby one would want to utilize such warning/safety signs on large vehicles.

17. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosa (U.S. Patent 5518561) as applied to Claim 2 above, and further in view of Chien (U.S. Patent 5775016).

Rosa discloses the claimed invention as cited above, but does not specifically teach the EL lighting surface having a yellow color when illuminated.

Chien teaches electroluminescent super thin lighting elements [Column 2, Lines 40-49], wherein, "a wide variety of color choices, including green, blue, pink, yellow, and white, which allows superthin lighting elements to be used for a variety of different guiding purposes and increases attractiveness while avoiding conflict or confusion with other warning signs [Column 2, Lines 62-67]."

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the safety sign of Rosa to incorporate the yellow electroluminescent element of Chien in order to provide a variety of different guiding purposes and increased attractiveness, as corroborated by Chien.

18. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosa (U.S. Patent 5518561) as applied to Claim 2 above, and further in view of applicant's admitted prior art (AAPA).

Rosa discloses the claimed invention as cited above, but does not specifically teach the EL light surface dimensioned to comply with safety sign regulations (re: Claim 6), nor approximate rectangular dimensions of 72 inches wide and 8.5 inches tall (re: Claim 7).

AAPA teaches, "In one embodiment the shape of the safety sign 600 is dictated by a government standard [Page 6, Lines 30-31]."

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the safety sign of Rosa to incorporate the dimensions/shape of AAPA in order to comply with government standards.

In addition, it would have been an obvious matter of design choice to have made the illuminated vehicle sign with rectangular dimensions of 72 inches wide by 8.5 inches tall, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).



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19. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosa (U.S. Patent 5518561).

Rosa discloses the claimed invention as cited above, but does not specifically teach the safety sign being attached to the front of the transportation vehicle.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the safety sign to the front of the transportation vehicle, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70. In this case, placing the safety sign on the front of the transportation vehicle would further enhance visibility and warn onlookers/vehicles in front of the transportation vehicle.

20. Claims 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosa (U.S. Patent 5518561) as applied to Claim 8 above, and further in view of Fernandez (U.S. Patent 5434013).

Rosa discloses the claimed invention as cited above, but does not specifically teach the safety sign attached to at least one mudguard.

Fernandez discloses, "Referring to FIGS. 1-7, an illuminated trim apparatus 10 for automobiles is disclosed. Trim apparatus 10 takes the form of automobile floor mats, splash guards, wheel trim, door guards, trunk and door lock trim, outer and inner body trim, sun shades, accent trim for the dash or radio, hood logo and emblem trim, license plate frames, speaker covers and side molding such as ground effects and door panel decorative strips [Column 3, Lines 61-68]. Apparatus 10 includes safe, low voltage lighting strips 12, known as electroluminescent lighting or "EL", to supplement or

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replace existing breakable and fire hazardous fixtures [Column 4, Lines 3-6; underlines and highlights added by examiner].”

It would have been obvious to one ordinarily skilled in the art at the time of invention to have incorporated the safety sign of Rosa onto a mudguard/splash guard, as taught by Fernandez, so as to ensure appropriate warning to proximate drivers. Such signs/warnings are commonly known and seen on larger vehicles (i.e. trucks or trailers).

21. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosa (U.S. Patent 5518561).

Rosa discloses the claimed invention as cited above except for the pattern including a triangle.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the pattern include a triangle, since it has been held to be within the general skill of a worker that mere change of form or shape of an invention involves only routine skill in the art. *Span-Deck Inc. v. Fab-Con, Inc.* (CA 8, 1982) 215USPQ 835. In this case, it is commonly known that making a sign into a different shape may add to the effectiveness in warning, as well as add an aesthetic appeal.

22. Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosa (U.S. Patent 5518561) as applied to Claim 12 above, and further in view of Burke (U.S. Patent 5779346).

Rosa discloses the claimed invention as cited above, but does not specifically teach the EL lighting surface being yellow when illuminated (re: Claim 18), nor teaches a translucent layer of material over the EL lighting surface, wherein the translucent layer alters a color of the EL lighting surface (re: Claim 19).

Burke teaches an EL device wherein an EL lighting surface provides a yellow background when illuminated, and further teaches, "An electroluminescent night light which provides a single color or multi-color display. The display is achieved by depositing, onto a conductive layer by screen printing means, a single film or one or more discrete phosphor characters of the same or different color [see Abstract; underlines added by examiner]."

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the safety sign of Rosa to incorporate the yellow electroluminescent lighting/translucent color layer of Burke in order to provide a variety of different guiding purposes and increased attractiveness.

23. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosa (U.S. Patent 5518561) as applied to Claim 12 above, and further in view of applicant's admitted prior art (AAPA).

Rosa discloses the claimed invention as cited above, but does not specifically teach the EL light surface dimensioned to comply with safety sign regulations, nor approximate rectangular dimensions of 72 inches wide by 8.5 inches tall.

AAPA teaches, "In one embodiment the shape of the safety sign 600 is dictated by a government standard [Page 6, Lines 30-31]."

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It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the safety sign of Rosa to incorporate the dimensions/shape of AAPA in order to comply with government standards.

24. Claims 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosa (U.S. Patent 5518561) as applied to Claim 12 above, and further in view of Fernandez (U.S. Patent 5434013).

Rosa discloses the claimed invention as cited above, but does not specifically teach the safety sign including and attached to at least one mudguard.

Fernandez discloses, "Referring to FIGS. 1-7, an illuminated trim apparatus 10 for automobiles is disclosed. Trim apparatus 10 takes the form of automobile floor mats, splash guards, wheel trim, door guards, trunk and door lock trim, outer and inner body trim, sun shades, accent trim for the dash or radio, hood logo and emblem trim, license plate frames, speaker covers and side molding such as ground effects and door panel decorative strips [Column 3, Lines 61-68]. Apparatus 10 includes safe, low voltage lighting strips 12, known as electroluminescent lighting or "EL", to supplement or replace existing breakable and fire hazardous fixtures [Column 4, Lines 3-6; underlines and highlights added by examiner]."

It would have been obvious to one ordinarily skilled in the art at the time of invention to have incorporated the safety sign of Rosa onto a mudguard/splash guard, as taught by Fernandez, so as to ensure appropriate warning to proximate drivers, as commonly seen on larger vehicles (i.e. trucks or trailers).

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25. Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosa (U.S. Patent 5518561) in view of Fernandez (U.S. Patent 5434013).

Rosa discloses a vehicle [Figure 1: (14)] including a safety sign [Figures 1-2: (10)] with an EL lighting surface [Figure 2: (18)] formed into a visual safety message [Column 2, Lines 59-63; Column 5, Lines 33-38], but does not specifically teach the safety sign being placed on a mud flap.

Fernandez discloses, "Referring to FIGS. 1-7, an illuminated trim apparatus 10 for automobiles ~~to claim 23~~ is disclosed. Trim apparatus 10 takes the form of automobile floor mats, splash guards ~~to claim 22~~, wheel trim, door guards, trunk and door lock trim, outer and inner body trim, sun shades, accent trim for the dash or radio, hood logo and emblem trim, license plate frames, speaker covers and side molding such as ground effects and door panel decorative strips [Column 3, Lines 61-68]. Apparatus 10 includes safe, low voltage lighting strips 12, known as electroluminescent lighting or "EL", to supplement or replace existing breakable and fire hazardous fixtures [Column 4, Lines 3-6; underlines and highlights added by examiner]."

It would have been obvious to one ordinarily skilled in the art at the time of invention to have incorporated the safety sign of Rosa onto a mudguard/splash guard, as taught by Fernandez, so as to ensure appropriate warning to proximate drivers, as commonly seen on larger vehicles (i.e. trucks or trailers).


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Han whose telephone number is (571) 272-2207. The examiner can normally be reached on 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMH (11/22/2005)

  
Stephen Husar  
Primary Examiner